

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J.B. HUNT TRANSPORT, INC.,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	No. 01-CV-03448
USF DISTRIBUTION SERVICES, INC.:	:	
and USF LOGISTICS	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

September 10, 2002

Presently before the Court are summary judgment motions of both Plaintiff J.B. Hunt Transport, Inc. ("Plaintiff" or "J.B. Hunt") and Defendants USF Distribution Services, Inc. ("USF Distribution") and USF Logistics ("USF Logistics"), (referred to collectively as "USF" or "Defendants"). Plaintiff brings this declaratory judgment action, seeking a declaration that it has no duty to defend the USF Defendants and pay any settlement or judgment on their behalf which would arise out of a personal injury action currently pending in a New Jersey state court.<sup>1</sup> Defendants counterclaim, seeking a declaration that Plaintiff owes them complete indemnification of all expenses resulting from the underlying New Jersey state court action. For the reasons

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1. Both J.B. Hunt and USF Logistics are named as defendants in the underlying New Jersey state court action.

stated below, Plaintiff's Motion for Summary Judgment is GRANTED and Defendants' Motion for Summary Judgment is DENIED.

## **I. BACKGROUND**

J.B. Hunt is a commercial motor carrier, contracting with Home Depot U.S.A., Inc. ("Home Depot") to provide contract carriage services as requested by Home Depot from time to time. USF Distribution is a flow-through distribution center selected to service Home Depot stores in the Mid-Atlantic states through USF Logistics' facility in Philadelphia, Pennsylvania. As it pertains to the instant action, USF's Mid-Atlantic Flow-Through Distribution Pilot Agreement with Home Depot caused it to load Home Depot cargo upon tractor-trailers owned by J.B. Hunt. J.B. Hunt's Contract Carrier Agreement with Home Depot caused it to transport Home Depot cargo, which was loaded by USF Logistics at its facility in Philadelphia, to Home Depot stores located in New Jersey. The J.B. Hunt tractor-trailer pertinent to this case was registered in Oklahoma and garaged in Pennsylvania. There is no direct contract between J.B. Hunt and USF.

Pursuant to J.B. Hunt's Contract Carrier Agreement with Home Depot, J.B. Hunt is required to carry extensive insurance including automobile liability insurance in an amount not less than five million dollars per occurrence. To that end, J.B. Hunt was certified by the Interstate Commerce Commission ("ICC") as a self-insurer for the first one million dollars of its automobile

liability exposure. In addition, J.B. Hunt carried substantial amounts of excess coverage pursuant to a policy with National Union Fire Insurance Company of Pittsburgh ("National Union"). J.B. Hunt's status as self-insured along with the National Union policy combine to satisfy the automobile liability insurance requirements in its agreement with Home Depot.

On October 14, 1999, USF Logistics loaded Home Depot cargo onto J.B. Hunt's tractor-trailer at its facility in Philadelphia, Pennsylvania. J.B. Hunt transported the cargo from the USF Logistics' facility to two Home Depot stores located in New Jersey. Herman Moller ("Moller"), a Home Depot employee, was injured while unloading freight from J.B. Hunt's tractor-trailer on this day. Moller subsequently brought a personal injury action in New Jersey state court naming J.B. Hunt and USF Logistics as defendants. Moller alleged that the defendants negligently loaded the tractor-trailer which caused him to sustain injury. This case is currently pending in the New Jersey state courts.

Recently, USF Logistics tendered its defense to J.B. Hunt under the assumption that J.B. Hunt is financially responsible for Moller's injuries because J.B. Hunt was the owner and operator of the accident vehicle. USF asserts that under applicable law, because it was a permissive user of J.B. Hunt's tractor-trailer when it loaded Home Depot cargo thereon, J.B.

Hunt, the accident vehicle's owner, is solely responsible for providing insurance coverage for the injuries sustained by Moller. J.B. Hunt refused to accept USF's tender of defense in the Moller litigation and refuses to accept sole financial responsibility for Moller's injuries. Thus, J.B. Hunt filed the instant declaratory judgment action, seeking a declaration that it is not responsible to defend the USF Defendants or to provide coverage for any damages for which USF may be found liable to Moller in the underlying personal injury action. Defendants counterclaim seeking their own declaratory judgment that J.B. Hunt owes them complete indemnification from and against any and all expenses and liabilities resulting from the underlying New Jersey state court action.

## **II. STANDARD**

A motion for summary judgment shall be granted if the Court determines "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In addition, "[i]nferences to be drawn from the underlying facts contained in the evidential sources . . . must be viewed in the light most favorable to the party opposing the motion. The non-movant's allegations must be taken as true and, when these assertions conflict with those of the movant, the former must receive the benefit of the doubt." Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, if the nonmovant's evidence is merely colorable, or is not significantly probative, or just raises some metaphysical doubt as to the material facts, summary judgment may be granted. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1355, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986).

## **III. ISSUE**

The issue presented by the facts briefly described above is whether J.B. Hunt has a duty to defend USF in the underlying New Jersey state court action and to pay any judgment entered in that personal injury action on behalf of USF by virtue of its status as owner and self-insurer of the accident vehicle.

The USF Defendants assert that financial responsibility for accidents involving the use of a motor vehicle rests solely with the vehicle owner and extends to those who use the vehicle with the owner's permission. Defendants further contend that such permissive use includes USF's use in loading the tractor-trailer on the date of the accident. Thus, USF concludes that regardless of any alleged negligence on their part in loading J.B. Hunt's tractor-trailer, because J.B. Hunt is the owner of the accident vehicle, J.B. Hunt self-insures the accident vehicle, and USF was a permissive user of J.B. Hunt's tractor-trailer, J.B. Hunt is solely liable for injuries sustained by Moller. According to USF, this requires J.B. Hunt to defend and indemnify it from and against any and all expenses and liability resulting from a finding in the underlying New Jersey state court action that the negligently loaded cargo caused Moller's injuries.

J.B. Hunt maintains that there is no basis in the law to compel such defense and indemnification and disclaims any responsibility for USF's liability.

#### **IV. SOURCES OF DUTIES TO PAY AND DEFEND**

The Court will examine three sources to determine the disputed duties: (1) federal law, including the statute and regulations governing motor carriers operating motor vehicles in interstate commerce; (2) state law, including the body of common

and statutory law governing duties of care to third parties, duties and rights between joint tortfeasors and other laws governing motor vehicle financial responsibility; and (3) private contracts, including the Contract Carrier Agreement between J.B. Hunt (the owner) and Home Depot, the Mid-Atlantic Flow-Through Distribution Pilot Agreement between USF (the loader) and Home Depot, and J.B. Hunt's insurance contract with National Union Fire Insurance Company. See, e.g. Carolina Cas. Ins. Co. v. Insurance Co. of North Am., 595 F.2d 128, 134-35 (3d Cir. 1979) (finding no basis under federal law for absolving lessor of truck of any duties, nor requiring lessee of truck to assume duties, to defend and pay judgments entered against lessor).

### **1. The Role of Federal Law**

As a condition of obtaining and maintaining registration with the Secretary of Transportation, a motor carrier, such as J.B. Hunt, must comply with the Motor Carrier Act of 1980, 49 U.S.C.A. 13906 (West 1997), by providing security for the protection of the public.<sup>2</sup> That provision, through

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2. 49 U.S.C.A. § 13906 reads in part:

(a) Motor carrier requirements.--

(1) Liability insurance requirements.--The Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139, and the laws of the State or States in which the registrant is operating, to the extent applicable. The security must be sufficient to pay, not more than the amount of the security, for "each final judgment" against the registrant for bodily injury to, or death of, an individual

(continued...)

Department of Transportation regulations implementing its mandate,<sup>3</sup> requires motor carriers registered with the Secretary of Transportation to file "a bond, insurance policy, or other type of security approved by the Secretary . . . ." 49 U.S.C.A. § 13906(a)(1). A motor carrier may also "submit proof of qualifications as a self-insurer to satisfy the security requirements of this section." 49 U.S.C.A. § 13906(d) (West Supp. 2002). Such assurances of the motor carrier's financial responsibility are to be conditioned to pay, within the limits of coverage, "each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or

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2. (...continued)

resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A registration remains in effect only as long as the registrant continues to satisfy the security requirements of this paragraph. 49 U.S.C. § 13906(a) (1996) (formerly 49 U.S.C. § 10927).

3. 49 C.F.R. 387.7 provides:

No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this subpart.

Section 387.9 sets forth the schedule of minimum levels of financial responsibility.

Section 387.309(a) provides:

As a self-insurer. The FMCSA will consider and will approve, subject to appropriate and reasonable conditions, the application of a motor carrier to qualify as a self-insurer, if the carrier furnishes a true and accurate statement of its financial condition and other evidence that establishes to the satisfaction of the FMCSA the ability of the motor carrier to satisfy its obligation for bodily injury liability, property damage liability, or cargo liability.



for loss or damage to property . . . or both." 49 U.S.C.A. 13906(a)(1).

The USF Defendants assert that USF Logistics was a permissive user of J.B. Hunt's vehicle when it loaded Home Depot's cargo onto the tractor-trailer. Therefore, USF argues, because Moller was injured as a result of that permissive use, the owner and insurer of the accident vehicle, J.B. Hunt, is responsible to pay any final judgment for bodily injury to Moller. If the Court assumes, as Defendants urge, that "use" of the motor vehicle extends to its loading activities, and further assumes that J.B. Hunt was the only available defendant in the underling personal injury suit, then certainly J.B. Hunt could not escape the significant duties of care and financial accountability to the public which the federal rules impose upon motor carriers. Carolina Cas. Ins. Co., 595 F.2d at 137.

However, the pleadings in this declaratory action do not seek a determination of the duty owed by a motor-carrier to the injured public. Rather, this case is an action to determine where the ultimate financial responsibility for the injury rests, after the injured plaintiff in the New Jersey state court action has obtained a judgment against multiple parties held responsible in fact and in law.

The federal motor carrier laws do not transfer to J.B. Hunt the duties to defend claims properly brought against others

or to pay judgments entered against others. 49 U.S.C.A. § 13906 and 49 C.F.R. § 387.1 et seq., governing insurance and other assurances of motor carriers' financial responsibility, require only that the carrier give security to pay any final judgment recovered against such motor carrier, they mention nothing about defenses of actions and nothing about payment of judgments recovered against other parties such as a negligent loader of cargo. Id. at 139. By the same token, the regulations governing qualification as a self-insurer, 49 C.F.R. § 387.309, require only that the self-insuring motor carrier establish its ability "to satisfy its obligation for bodily injury liability . . .," not any other party's obligations. Thus, under applicable federal law, J.B. Hunt is not responsible to defend USF or to provide coverage for any damages for which USF may be found liable to Moller in the underlying personal injury action.

However, it is not sufficient to look solely to the federal motor carrier requirements for a determination of the respective duties of a partially self-insured owner and a negligent, third-party permissive user, it is also necessary to examine the allocation of legal obligations which state law imposes, and to examine the private contracts to see whether they effectively provide a different allocation of financial responsibility.

## **2. The Role of State Law**

Defendants' Motion for Summary Judgment couches this dispute as a choice of law issue. As they see it, the competing states are Pennsylvania and New Jersey. Defendants vigorously argue for application of New Jersey law. However, Plaintiff does not contest the application of New Jersey law. Rather, J.B. Hunt asserts that it has no duty to defend and indemnify USF under the relevant New Jersey statutes and case law. Therefore, because the parties agree that New Jersey law applies, and this state appears to have the sufficient contacts and an important interest in seeing the appropriate party maintain responsibility for motor vehicle accidents occurring in its state, the Court will apply that state's law without undergoing a complex choice of law analysis.

USF asserts that the law of New Jersey mandates broad insurance coverage running from the owner of an accident vehicle to negligent third parties who use the accident vehicle with the permission of the owner. Therefore, USF argues, J.B. Hunt, as a vehicle owner and self-insurer, is obligated to provide insurance coverage to USF for its defense and liability in the underlying personal injury action.

It is settled under New Jersey law that insurance issued to an owner of a motor vehicle pursuant to New Jersey statute mandates owners of motor vehicles to provide coverage for those persons "using or responsible for the use of any such motor

vehicle with the . . . consent of the insured." Bellafronte v. General Motors Corp., 376 A.2d 1294, 1297; Kennedy v. Jefferson Smurfit Co., 688 A.2d 89, 93-94 (N.J. 1997). In addition, New Jersey courts agree that one who is in the process of loading or unloading cargo from the vehicle is a permissive "user" of the vehicle. Id. However, this New Jersey law, obligating a motor vehicle owner to provide coverage to a negligent permissive user, is only applicable when a motor vehicle owner obtains insurance coverage pursuant to and required by New Jersey statute. See Ryder/P.I.E. Nationwide, Inc. v. Harbor Bay Corp., 575 A.2d 416, 408 (N.J. 1990).

This is problematic for the USF Defendants seeking application of this New Jersey state case law because J.B. Hunt was not required to obtain insurance pursuant to New Jersey law. New Jersey's Compulsory Automobile Insurance Law, N.J.S.A. 39:6A-3, N.J.S.A. 39:6B-1, provides:

Every owner or registered owner of a motor vehicle registered or principally garaged in this State shall maintain motor vehicle liability insurance coverage . . . insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of a motor vehicle[.]

The J.B. Hunt tractor-trailer involved in the accident was not registered or principally garaged in New Jersey.<sup>4</sup> Therefore,

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4. The USF Defendants assert that J.B. Hunt has refused to divulge evidence of where the accident tractor-trailer was principally garaged. However, J.B.

(continued...)

J.B. Hunt is not compelled to maintain motor vehicle insurance pursuant to New Jersey law.

New Jersey law also extends responsibility for negligent, third-party permissive users to those motor vehicle owners who are self-insured pursuant to New Jersey law. See Ryder/P.I.E. Nationwide, Inc., 575 A.2d at 418-19. New Jersey's self-insured statute provides in pertinent part:

The commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

N.J.S.A. 39:6-52. J.B. Hunt did not apply for, nor did the New Jersey Commissioner issue, a certificate of self-insurance to J.B. Hunt. Therefore, J.B. Hunt is not self-insured pursuant to New Jersey law.

The fact that J.B. Hunt is not required to maintain insurance pursuant to New Jersey law and is not self-insured pursuant to New Jersey law leads me to believe that J.B. Hunt is not subject to the state's broad rule of insurance coverage established by New Jersey case law interpreting the scope of coverage of insurance maintained by a motor vehicle owner pursuant to New Jersey statute.

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4. (...continued)

Hunt has asserted in its answers to interrogatories served upon it by the USF Defendants that the accident vehicle was registered in Oklahoma and principally garaged in Philadelphia, Pennsylvania.

Regardless of J.B. Hunt's obligation to maintain automobile liability insurance pursuant to New Jersey statute, USF argues that J.B. Hunt still remains subject to the state rule mandating coverage of negligent, third-party permissive users by virtue of New Jersey's "deemer" statute, N.J.S.A. 17:28-1.4, which provides in pertinent part:

[A]ny insurer authorized to transact or transacting automobile or motor vehicle insurance business in this State . . . shall include in each policy coverage to satisfy at least the liability insurance requirements of . . . 39:6B-1 or 39:6A-3 . . . whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

By its terms the statute requires insurers authorized to transact motor vehicle insurance business in New Jersey to include in motor vehicle liability policies sold in any other state or in Canada policy coverage for the insured vehicle such as to assure that if that vehicle is operated in New Jersey the policy will provide the minimum liability coverage, uninsured motorist coverage, and personal injury protection coverage that the insurer would be obligated to provide to a New Jersey insured. Whitaker v. DeVilla, 687 A.2d 738 (N.J. 1997). Thus, irrespective of the minimum insurance requirements of the insured's state, the deemer statute guarantees that if the insured's vehicle is operated in New Jersey the insurer will provide liability coverage as required by N.J.S.A. 39:6B-1, 39:6A-3 and presumably the case law interpreting the scope of

that coverage, including coverage for negligent, third-party permissive users.

However, again it appears that J.B. Hunt escapes application of New Jersey law because it is not an "insurer authorized to transact or transacting automobile or motor vehicle insurance business in [New Jersey]." Nonetheless, the USF Defendants argue that J.B. Hunt's status as a self-insurer subjects it to the deemer statute because "it is the well-settled policy of [New Jersey] to consider a self-insurance certificate as the equivalent of a policy of insurance." Ryder/P.I.E. Nationwide, Inc., 575 A.2d at 422. While it is true that New Jersey makes no distinction between the two forms of insurance coverage, the Court cannot ignore the plain language of the statute. J.B. Hunt is not selling policies providing motor vehicle liability insurance coverage. As an ICC certified self-insurer, J.B. Hunt avoids the purchase of such liability policy but puts its assets at risk to satisfy any judgments render against it. See id. As discussed above, this risk only runs to liabilities against J.B. Hunt and not to other parties such as a negligent loader of cargo. There is no indication that New Jersey intended a self-insurer's assets to be used to satisfy judgments against other parties.

J.B. Hunt and USF are left with New Jersey law as it affects the parties to the underlying New Jersey state court

action on a judgment entered "jointly and severally" against them as defendants in that case. Under the law applicable to the facts presented in this case, nothing displaces any apportionment of legal obligations which New Jersey law would otherwise impose upon joint tortfeasors. Thus, New Jersey's Comparative Negligence Law<sup>5</sup> will apply to the ultimate apportionment of the legal obligation to pay the judgment as between the defendants named in the underlying personal injury action.

### **C. Terms of the Private Contracts**

There is no contract between J.B. Hunt and the USF Defendants. Thus, there is no private agreement between the parties which would obligate J.B. Hunt to insure against any negligence on the part of USF. Furthermore, each party's independent contract with Home Depot does not displace rights and duties otherwise created under federal and New Jersey law.

To the extent that USF argues that it must be considered an insured under J.B. Hunt's excess insurance policy with its commercial insurer, National Union, I note that National Union is not a party to this lawsuit. Thus, the question of

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5. N.J.S.A. § 2A:15-5.3 provides in pertinent part:

- Except as provided in subsection d. of this section, the party so recovering may recover as follows:
- a. The full amount of the damages from any party determined by the trier of fact to be 60% or more responsible for the total damages.
  - b. (Deleted by amendment, P.L.1995, c. 140.)
  - c. Only that percentage of the damages directly attributable to that party's negligence or fault from any party determined by the trier of fact to be less than 60% responsible for the total damages.



National Union's obligation to defend and pay a judgment assessed against USF by virtue of its insurance contract with J.B. Hunt is not presently before the Court.

Therefore, there is no private contract which would obligate J.B. Hunt to defend claims or to pay judgments entered against USF.

#### **V. CONCLUSION**

I conclude that nothing in the federal motor carrier requirements, J.B. Hunt's ICC certification as a self-insurer, New Jersey law, or existing private contracts alter any party's rights or duties of contribution. In particular, it is clear that those provisions do not impose on J.B. Hunt, the owner of the tractor-trailer, the status of an insurer with respect to USF. Therefore, USF is not absolved, nor is J.B. Hunt obligated to pay, judgments entered against USF in the underlying New Jersey state court action. Likewise, there is no imposition on J.B. Hunt to defend USF in that personal injury action.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

J.B. HUNT TRANSPORT, INC.,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	No. 01-CV-03448
USF DISTRIBUTION SERVICES, INC.	:	
and USF LOGISTICS	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 10<sup>th</sup> day of September, 2002, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 21) and Plaintiff's response in opposition thereto (Docket No. 24), it is hereby **ORDERED** that Defendants' Motion is **DENIED**.

Upon consideration of Plaintiff's Motion for Summary Judgment (Docket No. 22), Defendants' response in opposition thereto (Docket No. 25), and Plaintiff's reply(Docket No. 29), it is hereby **ORDERED** that Plaintiff's motion is **GRANTED**.

It is hereby **DECLARED** that J.B. Hunt Transport, Inc. is not responsible to defend USF Distribution Services, Inc. and USF Logistics or to provide coverage for any and all damages for which the USF Defendants may be found liable to Herman Moller in the underlying New Jersey state court action.

This case is **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.